

1 prior to their coming to you with the offer?

2 A No. So the deal was presented to
3 us and we did it.

4 Q Who is the "we"?

5 A Comcast and the other cable
6 distributors.

7 Q Which other cable distributors?

8 A Cox, Time Warner, other
9 distributors signed up for it. Dish did not.

10 Q And is that the story of how you
11 came to acquire an equity interest in MLB's
12 channel, the MLB network?

13 A Yes. That's also how it ended up
14 on D1.

15 Q And oh, with respect to the D1
16 level, The D1 level was the level that Major
17 League Baseball told you they wanted you to
18 distribute it at?

19 A Yes. We did not want to put it on
20 D1.

21 Q Did you have a choice?

22 A No, we were not offered a choice.

1 JUDGE SIPPEL: I got the first
2 condition. I got the newly created Baseball
3 channel on D1. Pay a guarantee on Extra
4 Innings and the equity interest. What was the
5 first one, if I just forgot?

6 THE WITNESS: Let's see. There
7 was Extra Innings. We got the deal on Extra
8 Innings. Launched The Baseball Channel on
9 digital basic. Pay a guarantee on Extra
10 Innings. And the equity interest.

11 JUDGE SIPPEL: So Extra Innings
12 would stay with Comcast?

13 THE WITNESS: Correct. They
14 weren't going to yank it.

15 JUDGE SIPPEL: Did they offer the
16 same deal to everybody? I mean to all the --
17 you tell me.

18 THE WITNESS: I don't know if they
19 offered -- I don't know that they offered the
20 equity piece to every operator. I think they
21 --

22 JUDGE SIPPEL: Congress was after

1 them, right?

2 THE WITNESS: Yes. They initially
3 did the deal as an exclusive deal with DirecTV
4 and then based on the political heat they were
5 getting, they then opened it up to the rest of
6 the industry.

7 JUDGE SIPPEL: That's what I was
8 getting at.

9 THE WITNESS: Yes. So then they
10 came to us and they said you know. Here's the
11 deal that you have to do.

12 JUDGE SIPPEL: Did any other
13 distributors pick it up though?

14 THE WITNESS: Yes. Time Warner
15 did. Cox did. Cablevision did. I'm sure a
16 number of other distributors did. I don't
17 think Dish did.

18 JUDGE SIPPEL: MLB must be pretty
19 popular around the industry.

20 THE WITNESS: Fairly stated.

21 JUDGE SIPPEL: Is that it?

22 BY MR. CARROLL:

1 Q That's Major League Baseball. So
2 let's do another league. NHL network?

3 A Do you want to do NBA, take them
4 sequentially.

5 Q Fine, NBA. So what happened with
6 NBA?

7 A So NBA very similar circumstance,
8 very similar circumstance. We had a deal with
9 NBA for their version of Sunday Ticket called
10 League Pass. They had the same kind of --

11 JUDGE SIPPEL: What was it called?

12 THE WITNESS: League Pass.

13 JUDGE SIPPEL: Oh, League, L-E-A-
14 G-U-E?

15 THE WITNESS: Yes. So they have
16 an out-of-market sports package called League
17 Pass, similar to Baseball's Extra Innings.
18 Similar to Football's Sunday Ticket. So they
19 do a bit of a variant. They don't say they're
20 going exclusive. They saw what happened with
21 Baseball. NBA doesn't come to us and say
22 they've done a deal with -- an exclusive deal

1 with DirecTV. But they do come to us and they
2 say we won't license you League Pass unless
3 you carry NBA TV on digital basic.

4 Now NBA TV and we were already
5 carrying on the sports tier. This was one we
6 were carrying on the sports tier. And NBA
7 came to us and they said our deal was up.
8 They said we're not going to renew your deal
9 for League Pass and we're not going to renew
10 your deal for NBA TV on the sports tier. If
11 you want to continue receiving League Pass,
12 you have to move NBA TV to digital basic. And
13 in that case there was no equity. And we
14 decided to do that deal because we didn't want
15 to lose League Pass and have that go
16 essentially exclusively to our competition.

17 So it was a very similar structure
18 to -- a very similar kind of deal to Baseball.
19 It just came about a little differently.

20 JUDGE SIPPEL: There's really only
21 one condition to it. You had to -- Comcast
22 had to take League Pass -- I'm sorry, you

1 would obtain League Pass on the condition that
2 you put this newly created network, NBA, on
3 your D1. Is that right.

4 THE WITNESS: Yes, you got it
5 exactly right, except it was not a newly
6 created network.

7 JUDGE SIPPEL: It was not. Okay.

8 THE WITNESS: In that case, we
9 were already carrying -- NBA TV had already
10 been created and we were carrying it on the
11 sports tier.

12 JUDGE SIPPEL: That's right. You
13 did say that.

14 THE WITNESS: NHL?

15 JUDGE SIPPEL: That was the one
16 you took -- you took something on the sports
17 tier and took it down?

18 THE WITNESS: Yes.

19 JUDGE SIPPEL: But then they're
20 explaining the reason why?

21 THE WITNESS: Yes.

22 JUDGE SIPPEL: Continue, please.

1 BY MR. CARROLL:

2 Q That leaves NHL, sir.

3 A So the NHL, they also had a
4 channel that was on the sports tier, like NBA
5 and they came to us and presented us with an
6 MFN offer. They did a deal with DirecTV in
7 which they gave DirecTV equity in the NHL
8 network in exchange for moving the NHL network
9 to D1.

10 JUDGE SIPPEL: Say that again,
11 please?

12 THE WITNESS: They gave, they
13 meaning NHL, gave equity to DirecTV in
14 exchange for DirecTV moving the network to a
15 higher penetrated tier. They don't call it
16 D1. They moved it to a higher -- DirecTV
17 moved it to a higher penetrated tier.

18 JUDGE SIPPEL: Okay.

19 THE WITNESS: So the NHL got extra
20 distribution from DirecTV in exchange for
21 equity. They also -- DirecTV also got a lower
22 rate, a much lower rate per subscriber rate.

1 So the actual checks that were being made out
2 to NHL were about the same. Even though there
3 were more subscribers, the price was much
4 lower. So the checks were about the same.

5 So we looked at that and we
6 basically accepted that deal and we moved the
7 NHL network on to D1. So we got the equity,
8 the same equity that DirecTV had gotten, a
9 small minority stake. We got that equity. We
10 moved it to D1. Our license fees were
11 reduced. We also extended the deals and got
12 some new media rights. There were a lot of
13 other benefits in that deal to doing it.

14 BY MR. CARROLL:

15 Q So in the NHL case you just
16 described, the equity piece that you obtained
17 came to you as a result of a deal they had
18 with DirecTV and offered to you as an MFN, is
19 that correct?

20 A Yes, as an MFN.

21 MR. CARROLL: And Your Honor, I
22 want to have Mr. Bond give you the price

1 number, but to do that I have to make sure for
2 the NHL piece that -- there's nobody not
3 covered by the protective order for this.
4 This will only take about a minute.

CLOSED SESSION

JUDGE SIPPEL: Thank you for being so alert.

BY MR. CARROLL:

Q You referred to a lower price, you were describing that to His Honor. Could you tell His Honor what the price is under your arrangement with the NHL?

A About [REDACTED], [REDACTED].

Q [REDACTED] per?

A Per subscriber.

Q And how does that compare to Tennis Channel's rate?

A Tennis Channel's rate under their Option A, I think was about [REDACTED].

Q [REDACTED]?

A Yes.

Q What is Tennis Channel's current rate under the existing contract?

A At our current levels of distribution, it looks like [REDACTED].

Q Okay, and under your arrangement

1 with the NHL as you just described, you're
2 paying the NHL [REDACTED]?

3 A Yes.

4 JUDGE SIPPEL: That is the
5 licensing fee?

6 THE WITNESS: Correct.

7 JUDGE SIPPEL: I understand
8 exactly what you're saying.

9 MR. CARROLL: And the only final
10 order of business, Your Honor, is I got so
11 distracted early on that I forgot to mark and
12 move into evidence the written copy of Mr.
13 Bond's direct testimony. May I do that now?

14 JUDGE SIPPEL: Please, do. Oh
15 yes. Don't wait to ask.

16 MR. CARROLL: We're out of closed
17 session.

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1 JUDGE SIPPEL: This is Comcast
2 Exhibit 75.

3 (Whereupon, the above-referred to
4 document was marked as Comcast
5 Exhibit 75 for identification.)
6 Is that correct?

7 MR. CARROLL: Yes. Thank you,
8 Your Honor.

9 BY MR. CARROLL:

10 Q Comcast Exhibit 75, Mr. Bond, my
11 final question, I think -- that's never a
12 trustworthy comment in the world, but I hope
13 it is here, can you identify this as a copy of
14 your written direct testimony submitted in
15 this matter?

16 A It is.

17 MR. CARROLL: Your Honor, we would
18 offer this into evidence.

19 JUDGE SIPPEL: Is that your
20 signature on the last page?

21 THE WITNESS: Yes, sir.

22 JUDGE SIPPEL: Any objections?

1 MR. PHILLIPS: No, sir.

2 JUDGE SIPPEL: Comcast 75 is now
3 received as Comcast 75. Thank you.

4 (The document, having been marked
5 previously for identification as
6 Comcast Exhibit No. 75 was
7 received in evidence.)

8 MR. CARROLL: Your Honor, I thank
9 the Court for its time and patience this
10 morning and I turn the witness over to my good
11 friend, Mr. Phillips.

12 JUDGE SIPPEL: Do you want to go
13 to lunch and then come back?

14 MR. SCHMIDT: I thought you would
15 never ask, Your Honor.

16 (Laughter.)

17 JUDGE SIPPEL: I was only asking
18 Mr. Phillips.

19 (Laughter.)

20 MR. PHILLIPS: After a few hours
21 of direct, I probably have a fair amount of
22 cross. If the witness wants to go through we

1 can, but I myself would go to lunch.

2 JUDGE SIPPEL: What would be your
3 druthers?

4 THE WITNESS: Mr. Phillips, do you
5 have an idea of how long it will be?

6 MR. PHILLIPS: I think it will be
7 a few hours.

8 THE WITNESS: I would prefer that,
9 Your Honor.

10 JUDGE SIPPEL: To do what?

11 THE WITNESS: Have lunch.

12 MR. CARROLL: That's the best
13 answer he's given all day.

14 JUDGE SIPPEL: Then that's fine.
15 Then your testimony is now in abeyance.
16 You're still under oath, but you may go to
17 lunch and speak with counsel, but not about
18 your testimony, not about what you're going to
19 testify to.

20 The question is how long? It's
21 ten after one. I guess 2:30. That's what
22 we've been doing. So we're recessed then

1 until 2:30. Thank you very much.

2 MR. CARROLL: Thank you very much.

3 Your Honor.

4 MR. PHILLIPS: Thank you, Your
5 Honor.

6 (Whereupon, at 1:08 p.m., the
7 hearing was recessed, to reconvene at 2:30
8 p.m.)

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A-F-T-E-R-N-O-O-N S-E-S-S-I-O-N

(2:37 p.m.)

JUDGE SIPPEL: Let's go on the
record. Mr. Bond, you are still under oath.

THE WITNESS: Thank you.

JUDGE SIPPEL: You're welcome.

And cross-examination -- I'm
sorry, direct is finished.

MR. CARROLL: It is finished.

JUDGE SIPPEL: Mr. Phillips, it is
cross-examination time.

MR. PHILLIPS: Yes, thank you,
Judge.

JUDGE SIPPEL: We all have to go
to the dentist sometimes.

(Laughter.)

MR. PHILLIPS: I don't think it
will be hard like that, because I'm --

JUDGE SIPPEL: I'm just kidding.

CROSS-EXAMINATION

BY MR. PHILLIPS:

Q It's good to see you again, Mr.

1 Bond.

2 A Same here.

3 Q I feel like with your moving over
4 to the content side of the table, our side of
5 the table, this may put a pause in our
6 relationship for a while.

7 A That may be. That would be quite
8 a shame.

9 (Laughter.)

10 Q You know, I have the same feeling.

11 (Laughter.)

12 Now, Mr. Bond, you understand
13 that, all other things being equal, networks
14 would like to have broader distribution.

15 A Yes.

16 Q Is that fair?

17 A Yes.

18 Q An advantage of a flexible
19 arrangement like the one that Tennis Channel
20 entered into with Comcast in 2005 is that it
21 allows a new network at the time, or
22 relatively new, to build up and move up within

1 the flexibility of that arrangement. Would
2 you agree with that?

3 A Yes.

4 Q And you wouldn't disagree with me
5 if I told you that that was what Tennis
6 Channel expected in that 2005 agreement, would
7 you?

8 A I don't know if that's what they
9 expected. The context of that deal, when we
10 did it, was a sports tier deal. That was the
11 discussion around it.

12 Q But it was very specifically not
13 limited to a sports tier. It allowed the
14 network to grow and to move up if things
15 improved, among other things, correct?

16 A You're correct. It didn't specify
17 sports tier. It said it could be carried on
18 any level of service or not carried at all.

19 Q Now, Comcast doesn't require any
20 system of -- let me back up a second. Comcast
21 has I think you said maybe, what, 1,000, 2,000
22 systems around the country?

1 A Yes.

2 Q Okay. And you mentioned that
3 about [REDACTED] of those carry Tennis Channel
4 more broadly than a sports tier, correct?

5 A Yes.

6 Q Now, Comcast doesn't require any
7 system to carry Tennis Channel more broadly
8 than a sports tier, does it, sir?

9 A No.

10 Q And for Golf, Comcast requires its
11 systems to carry it on an expanded basic or
12 expanded digital tier, correct, sir?

13 A Those services -- Golf had been
14 carried on the basic tier. So there hadn't
15 necessarily been a mandate with respect to
16 Golf, but those channels that are carried on
17 the basic tier have been carried on the basic
18 tier for quite some time.

19 Q I'm sorry. But under the contract
20 for Golf and Versus there is a carriage
21 requirement, is there not, sir?

22 A Yes.

1 Q And that carriage requirement,
2 Comcast has undertaken that it will distribute
3 it to at least a certain number of --

4 A That's correct.

5 Q And in order to meet that number
6 it requires its systems, at least a certain
7 percentage of them, to carry it in order to
8 meet that number, right, sir?

9 A Yes, that's correct.

10 Q And that number is approximately
11 what for Golf, sir?

12 A I don't recall under the Golf
13 deal. I believe the Versus deal is [REDACTED]
14 percent.

15 Q And it's something around that
16 point for Golf as well, do you believe?

17 A Yes.

18 Q Thank you. And that's required on
19 a system-by-system level. I mean, they -- you
20 couldn't go into that level, could you?

21 A Correct.

22 Q Now, I want to go back to the

1 timeline a second. I've actually enjoyed Mr.
 2 Carroll's timeframe. My only fault with it
 3 has always been that it just -- it omitted
 4 some of the dates that, of course, I think are
 5 important, and I want to see if we can't begin
 6 to try to fill it in a little bit. So do you
 7 have that timeline, sir?

8 JUDGE SIPPEL: We're not going to
 9 put birthdays in, are we?

10 MR. PHILLIPS: You know what, sir?
 11 If you put my birthdays down in here, this
 12 chart would run off the table. So I'm not
 13 going to try to get --

14 (Laughter.)

15 THE WITNESS: All right. I have
 16 it.

17 BY MR. PHILLIPS:

18 Q Now, before I start on this, I
 19 just have one other question. Networks that
 20 previously had been carried -- in the sports
 21 tier where it's developed, you talked about
 22 the sports tier -- I'm sorry. Strike all of

1 that. This is what I get for asking Mr.
2 Smith's questions that he has written for me.

3 When cable systems began to use
4 digital tiers, did those tiers include only
5 networks that were launched at that time?

6 A Is your question -- can I
7 understand your question? Are you asking that
8 with respect to, say, the sports tier, is it
9 generally services that existed at that time
10 or after that went on the sports tier?

11 Q No, I guess it's a little
12 different. I'm going back in time before
13 that.

14 A Okay.

15 Q You testified that at the time
16 that there were the channels.

17 A Yes.

18 Q And then, there was the expansion
19 into digital, and there were a lot more.

20 A Yes.

21 Q And the question was: were only
22 new channels launched on the digital networks

1 and digital part of the tier?

2 A On the digital tier --

3 Q Yes.

4 A -- generally, I think that's
5 accurate.

6 Q But there were some networks that
7 had previously been carried on analog that
8 were carried then on digital?

9 A I'm not sure I understood your
10 question. That they were moved to digital, is
11 that your --

12 Q Yes.

13 A That generally didn't happen. It
14 happened sometimes, but generally didn't
15 happen.

16 Q Today, more channels, no matter
17 how old they are, are carried on digital,
18 though, correct?

19 A Yes, because the tiers that used
20 to be analog are now digital. There has been
21 a conversion in the technology.

22 Q Now, let me try to understand this

1 timeline for a second, if I could turn your
2 attention to it. So we have at the beginning
3 here that in January and July 1995 Golf and
4 OLN, which becomes Versus, are launched, and
5 Comcast owns the percentages of them that are
6 listed, correct?

7 A Yes.

8 Q And later on those percentages
9 increase, so that Comcast, by 2009, the date
10 that is at issue in this lawsuit, they are
11 wholly owned, correct?

12 A Yes.

13 Q Okay. But back then, in '95,
14 Comcast began to distribute them broadly
15 around the time they got that ownership
16 interest, correct, sir?

17 A You know, I wasn't at Comcast
18 then, so I don't know what their distribution
19 was at that time. I think that's right, but
20 I wasn't at Comcast then.

21 Q Okay. That was another question I
22 was going to ask. You weren't at Comcast.

1 You were at TCI?

2 A TCI, that's correct.

3 Q And do you know that Golf was
4 initially a la carte?

5 A Yes.

6 Q And then, it was more broadly
7 distributed after it had struggled for a while
8 in a la carte, is that correct?

9 A Yes.

10 Q And it wasn't until a couple of
11 years later, I take it, that the rest of the
12 market started to catch up with how broadly
13 Comcast had been distributing Golf and Versus.
14 Is that the way you read this?

15 A Well, as I said, I wasn't at
16 Comcast, so I don't exactly know what their
17 distribution was. But I do think that after
18 they launched the network, after that group
19 launched the network, I think they built
20 distribution through the '90s with other
21 distributors.

22 Q All right. So that the rest of

1 the market started to catch up to where
2 Comcast had been, correct, sir?

3 A Yes.

4 Q Now, I want to turn your attention
5 to the MFN offers that Tennis Channel had
6 made.

7 A Yes.

8 Q Now -- and I'm referring in
9 particular to The Tennis Channel MFN equity
10 for carriage offer in July of 2007 --

11 A Yes.

12 Q -- and that's I think behind the
13 -- oh gosh, the --

14 A I have it.

15 Q I also wish Mr. Carroll had put
16 more tabs in, but I'm talking to the
17 presentation.

18 JUDGE SIPPEL: We are only dealing
19 with the -- what am I saying now? We're not
20 doing tabs this year.

21 (Laughter.)

22 BY MR. PHILLIPS: